

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Consumer Protection)	WC Docket No. 05-271
in the Broadband Era)	
)	

Comments of 3PV – Third Party Verification, Inc.

3PV hereby respectfully submits its comments in response to the above-referenced Notice of Proposed Rulemaking (NPRM).¹ In its *Notice*, the Commission asks for assistance in developing a “framework for consumer protection” that meets the “consumer protection objectives in the Act.”² Clearly the issue of consumer protection is critical as new technologies, such as VoIP are deployed to the marketplace.³ VoIP telecommunications is poised to become the

¹ Since 3PV's incorporation in 2000, the company has handled over 15 million third party verifications, including almost 2 million e911 acknowledgements, taking pride in its reputation as one of the most reliable companies in the telecommunications industry. With a mission to deliver consistently superior third party verifications results to the most demanding of customers, the company is committed to innovating TPV technology while delivering a hands-on approach to satisfying customer needs. This commitment to customer service along with 3PV's policy of strict regulatory compliance has allowed 3PV to become the second largest provider of third party verification services. VoIP providers of all sizes consult with 3PV on a regular basis for advice on the best third party verification methods available so they can ensure the successful completion of customer sales.

² *Notice* at ¶ 146.

³ The Commission asks specifically about, among other things, slamming and federal and state involvement. *Notice* at ¶¶148-58.

standard method of phone service over the next several years. The Yankee Group has forecast that 17.5 million U.S. households will have VoIP by year-end 2008⁴.

Traditional telecommunications companies have a clear understanding of what is required of them in order to facilitate the change of a customer's carrier(s). The Telecommunications Act of 1996 and subsequent State and Federal regulations have provided for a clear and concise method by which customer complaints are evaluated. This clarity of regulation has resulted in significant benefit to the FCC, the States, the telecommunications carriers and the consumer, as follows:

A) Benefits to the FCC

The FCC has interpreted Section 258 of the 1996 Telecommunications Act to set many of its slamming rules as a floor, allowing States to continue to enforce their own consumer protection rules. The States have their own enforcement policies and departments to resolve slamming, cramming and other telecommunication complaints by their citizens. These policies provide two major benefits to the FCC:

⁴ News Release, "[The Yankee Group Expects the Consumer Local VoIP Industry to Grow More Than 100 Times Its 2003 Size](#)," Aug 30, 2004.

(1) Leveraging of State Expertise: People living and working within a State know more about the issues and problems facing their citizens. A State enforcement agency is much more likely to recognize which terminology is commonly misunderstood when phone service switches are being facilitated. At the FCC these details may be lost, given the magnitude and diversity of the complaints filed. The State's knowledge of the telecommunications trends and problems occurring within the State provides better insight and therefore better consumer protection than is possible at the Federal level.

(2) Leveraging the State's Resources: The State's drafting of rules and regulations, combined with enforcement of those rules and regulations, take a significant time and resource burden off the FCC. Every complaint handled by a State PSC/PUC is a complaint that the FCC does not have to process.⁵ Moreover, if a State PSC/PUC handles a novel situation, then the FCC is spared the time and resources necessary to determine whether or not to enact that regulation.

B) Benefits to the States

⁵ For example, in 2004, the Illinois Consumer Protection Division received 3,538 [telecommunication complaints](#), comprising 15 percent of the state's 24,050 consumer complaints. Missouri Attorney General Jay Nixon said [slamming and cramming complaints](#) accounted for 1,898 of the estimated 88,000 consumer complaint calls, letters and e-mails complaints made in 2004.

Each State has the authority to enact rules and regulations related to the telecommunications industry and to enforce those rules as necessary. This allows the States to deal with recurring or potential problems quickly. The States also have significant experience in the handling of consumer complaints, which results in a firm but typically fair handling of those complaints. The approach taken by most States when enforcing the third party verification rules is to balance the facts of the incident, the clarity of the rule(s) which were violated, the intention and track record of the telecommunications company, and the actual harm to the consumer to arrive at a result that is fair to all parties.

C) Benefits to telecommunications carriers

Clear and concise rules at the Federal and State levels protect competition. Since all carriers must follow the same rules, all telecommunications carriers are on a level playing field. Each telecommunications carrier knows what actions it can and cannot take in the sales process and associated third party verification process. This greatly reduces the likelihood of any telecommunications carrier gaining market share through the use of unfair or deceptive marketing practices – practices that unfortunately have plagued the industry for years.⁶

⁶ According to a [National Association of State Utility Consumer Advocates](#) resolution released in 1997, at that time slamming was the largest single consumer complaint received by many state

D) Benefits to the consumer

The ability of States to be as involved as they would like in telecommunications consumer protection gives the people within that State a faster, more effective, less bureaucratic process and a more localized advocate when disputes arise. Many consumers do not like having to deal with the Federal government on any level. There is a perception that not only will their individual issue be one of thousands of other issues currently being dealt with by the FCC, but also that the process will become long and burdensome once the Federal government is involved. While this may not always be true, this perception stops many people from seeking help.

The main benefit from the clarity of regulation, however, is that all parties understand how the system works and what must be done to effectuate change. This benefit is clear from any unbiased analysis of customer transfer completion rates – the average number of carrier changes that are actually completed. The chart below shows completion rates over the last five years for 3PV clients, all of whom were non-VoIP and therefore regulated as common carriers under Title II of the Telecommunications Act of 1996:

consumer advocates, with as many as one million consumers fraudulently transferred annually to a provider which they have not chosen.

3PV Completion Rates: Traditional Telecommunications Providers
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Year	Total Percentage Completed Third Party Verifications
2000	75.91%
2001	90.28%
2002	92.85%
2003	98.31%
2004	93.39%
Total	92.90%

In contrast, the chart on VoIP carrier completions presents a much different picture, in large part because the regulatory scheme is unclear and State involvement has been all but eliminated. At the present time, 3PV is working with several top cable companies and several of the largest non-cable VoIP providers. *In almost every case, we have discovered that their initial average completion rates (before utilizing the third party verification procedures from the Act) have been less than 50%.* Certainly the new entrants suffer, but the completion rates show that in a little over 40% of putative new VoIP customers do not understand what services they are signing up for. In short, in some cases fraud and in others miscommunications – combined with the lack of State involvement make VoIP subject to significant levels of customer confusion. There are two simple reasons for this, which are addressed below in priority order:

1) *The methods and procedures that have prevented fraud and customer confusion in traditional telecommunications services are not being applied to VoIP providers.* The FCC and the States have all encountered and addressed the types of questions to be asked of consumers contemplating a service provider change including which questions must be asked and answered separately and what wording must be used. All of these policy choices were based, in part or whole, on consumer protection needs. Over time, questions, words and phrases that were confusing have been eliminated and replaced with terms less likely to confuse the consumer.

In addition, consumers have gotten used to the existing third party verification procedure and questions; their comfort level with the process results in fewer problems.

Because of the uncertainty over VoIP's regulatory status, many VoIP providers are not following the rules and the language established in rules for switching traditional telephony consumers. The result, as the charts above demonstrate, is more unhappy customers and fewer successful carrier changes.

2) When VoIP consumers do have complaints, there is no experienced government source with the ability and experience to handle them in a timely fashion. Under the 1996 Telecommunications Act, the complaint process was simple and clear. The new carrier had to provide some form of third party verification before a change of carrier could take place. If the customer filed a slamming, cramming or other complaint, the State or FCC would request the third party verification method (LOA, recording, etc) from the carrier for review. If the verification was completed properly, the complaint would be overturned; otherwise the complaint would be upheld.

Since oversight for the VoIP space is unclear, many VoIP providers have failed to abide by the established system for the determination of customer complaints. Customers do call State regulatory agencies and sometimes the FCC with VoIP complaints, but in the current regulatory environment, some argue, it is impossible to know how the complaints should be handled. If as the FCC suggests might be the case, these services are not subject to Title II, there is some question of whether they have jurisdiction to apply their slamming regimen to these new services. What should be done? What will be done? These are all unknowns.

In this regulatory vacuum, regulated carriers are deciding not to release customers to the new VoIP provider without a third party verification that meets with State and/or FCC approval. While this is being done mainly to keep current customers from being switched to VoIP providers, the side effect is that some regulation is being applied, although from the wrong source and for the wrong reasons. The result is the same as when traditional telephone companies were unsupervised and the 1996 Telecommunications Act was enacted to bring the industry under control.⁷

Two of the major changes imposed by the 1996 Telecommunications Act are the process for third party verification and the method for handling consumer complaints. Third party verification requirements are an essential element in ensuring consumers are protected against the unauthorized switching of their telecommunication service providers/carriers without the consumer's informed consent and/or release of their personal information without appropriate protections. It is essential that the prescient policy judgments Congress embodied in Section 258, which includes third party verification requirements and leverages State expertise and enforcement authority to protect consumers, also be applied to VoIP providers, regardless of the final determination of whether VoIP providers are seen as information services or telecommunications services as defined by the 1996 Telecommunications Act.

⁷ [The FCC reported](#) that slamming complaints rose from 16,000 in 1996 to 44,000 in 1997 (a 175 percent increase). In 2004, [the FCC resolved](#) about 3,500 slamming complaints.

While, understandably, there is resistance to any oversight of VoIP telecommunications providers in the fear that the costs associated with such oversight could slow deployment, there is still a need for the pragmatic oversight of VoIP telecommunications providers. Without this oversight the competent enforcement that the FCC and the States have been able to bring to bear on changes will evaporate. Consumers will have no remedy. Initially VoIP providers tended to be small, startup companies; however, in 2005 the traditional telecommunications carriers (major IXC's and RBOCs) began to enter the VoIP market and cable MSOs also increased their VoIP market presence.

As these major players enter the VoIP market, they will likely begin to take market share away from the current VoIP providers since they have the customer base, reputations and resources to do so.

It is not only the major IXC's and RBOCs that are at issue. The revenue generated by VoIP telecommunications will make it very profitable, and therefore tempting, for any VoIP telecommunications company to slam customers; particularly if there are no established consumer protection and third party verification measures in place.

Third party verification is also essential if the consumer is to be protected, especially those consumers unfamiliar with VoIP and the differences between using VoIP and traditional telecommunications services and equipment. Third

party verification is a proven method for protecting consumers from fraud and misrepresentation on the part of unscrupulous sales and/or marketing campaigns. This process is understood not only by the consumer, but also the telecommunications industry and various branches of government on the State and Federal level. This familiarity serves to make the process simple and easy to administer.

In addition, it would create an unfair advantage for VoIP providers if they were not required to perform third party verifications but traditional telecommunications providers were required to do so.

The role of the States in protecting the consumer is established, proven and invaluable. To dismantle or reduce the States' role in this process would likely increase consumer protection complaints and expense on the part of the agency(s) tasked with assuming this highly specialized role. While there are many reasons to keep the States active in the consumer protection aspect of VoIP telecommunications, only a few bear discussion in this report. They are as follows:

- 1) The telecommunications industry as a whole has become both accustomed to and reliant upon State PSC/PUC rules and regulation as well as the enforcement process involved at the State

level. Since at least 1996, telecommunications providers have worked with the States to determine everything from question formats to penalties for non-compliance. Both the States and the telecommunications providers have invested significant time and money in education, process creation and other functions necessary to make the industry as safe for consumers as possible.

- 2) Some have suggested that the Attorney General's Office (AG) in each State could handle consumer complaints in lieu of the State commission. Any changes with regard to the agency(s) handling consumer protection issues for telecommunications would be at best time consuming and expensive – and at worst a disaster. Even if the rules and procedures were left intact, the new agency(s) handling consumer complaints would have to allocate personnel and technological resources to deal with the new influx of complaints, train and educate both the telecommunications industry and the consumers as to the new way to handle complaints, and more.

In addition, the choice of the agency(s) used to handle consumer complaints could result in the reduction in the reporting of these complaints. Consumers, for example, may not feel comfortable

calling the AG's Office in their State since those agencies are manned by attorneys usually associated with the criminal justice system. In any event, even if one assumes that the State AG's authorizing statute allows them the same range and scope of consumer protection as that afforded the respective State commissions, the actual State AG enforcement actions, in most cases, are a much more lengthy process than existing State commission procedures.

With the emergence of major IXC's and RBOCs in the VoIP market, the best approach for dealing with consumer protection issues is to leave the current system for handling carrier changes exactly as it exists today. The current system works, and works well. Leaving the current system in place, as well as the role of the States in that system, will avoid consumer and industry confusion as well as saving significant money and jobs at the State level.

Based on the information presented in this comment, we believe the following recommendations are in order:

- 1) **Existing third party verification rules should be applied to VoIP telecommunications providers.** Regardless of whether VoIP telecommunications providers are found to be a "telecommunications service" or an "information service" under the 1996 Telecommunications

Act, the consumer must still be protected from the fraud, misrepresentation and other problems. Third party verification has been proven to be the best method of protecting consumers.

- 2) **The FCC and the State's role in third party verification and consumer protection should remain unchanged.** The FCC and the States play a crucial role in both consumer protection and maintaining fair competition among telecommunications companies. Staff members at the FCC and the State commissions are experts in the regulations and their enforcement and have amassed a proven track record for effectively managing the consumer protection process. Eliminating the FCC and the State roles in this area can only result in more confusion, more delays in service changes, and increased incidents of fraud.